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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JASON P. STEWART, et al.,

12 Plaintiffs,

13 vs.

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17 CALIFORNIA DEPARTMENT OF  
18 EDUCATION, et al.,

19 Defendants.  
20

CASE NO. 07CV0971-MMA (WVG)

**ORDER SPREADING MANDATE OF  
UNITED STATES COURT OF  
APPEALS FOR THE NINTH  
CIRCUIT;**

**VACATING APPEAL MANDATE  
HEARING;**

**GRANTING DEFENDANTS POWAY  
UNIFIED SCHOOL DISTRICT, et al.'s  
REQUEST TO WAIVE FURTHER  
PROCEEDINGS RE: VEXATIOUS  
LITIGANT DETERMINATION**

21 **APPEAL MANDATE**

22 On September 20, 2012, the United States Court of Appeals for the Ninth Circuit entered  
23 judgment in this case, affirming this Court's February 8, 2010 Judgment dismissing Plaintiffs'  
24 claims under 42 U.S.C. § 1983, the Individuals with Disabilities Education Act ("IDEA"), the  
25 Americans with Disabilities Act ("ADA"), and § 504 of the Rehabilitation Act; vacating the  
26 Court's February 8, 2010 Order declaring Plaintiff Lindsey Stewart a vexatious litigant and  
27 imposing a pre-filing injunction; and remanding the action to this Court for further consideration  
28 of its pre-filing determination. The circuit court's judgment took effect October 15, 2012, and

1 constitutes the formal mandate issued pursuant to Rule 41(a) of the Federal Rules of Appellate  
 2 Procedure. The mandate is spread, and this Court once again has jurisdiction over this action.  
 3 Accordingly, the Court **VACATES** the Appeal Mandate hearing previously scheduled for  
 4 November 27, 2012.

#### 5 **VEXATIOUS LITIGANT MOTION**

6 On June 4, 2009, Defendants Poway Unified School District, et al. filed a Motion for an  
 7 Order Requiring Plaintiffs to Furnish Security Pursuant to California Civil Procedure Section 391,  
 8 *et seq.*, arguing that Plaintiff Lindsey Stewart qualifies as a vexatious litigant. *See* Civil Case No.  
 9 08cv2254-MMA, Doc. No. 24. In its February 8, 2010 Order, the Court granted Defendants'  
 10 motion and issued a pre-filing injunction against Ms. Stewart. *See* Doc. No. 189. As noted above,  
 11 the circuit court vacated that portion of the Court's February 8, 2010 Order granting the motion  
 12 and issuing the injunction, and remanded the matter for further consideration upon the basis of a  
 13 more fully developed record.

14 On November 13, 2012, Defendants Poway Unified School District, et al. filed a Notice of  
 15 Intent to Dismiss Vexatious Litigant Claim. *See* Doc. No. 207. Defendants now request "to waive  
 16 any further follow-up proceedings on the pre-filing determination of a vexatious litigant  
 17 designation against Lindsey Stewart." *Id.* As such, the Court shall consider Defendants' motion  
 18 withdrawn.

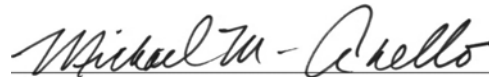
#### 19 **CONCLUSION**

20 It is well-settled that "a mandate is controlling as to matters within its compass." *Sprague*  
 21 *v. Ticonic Nat'l Bank*, 307 U.S. 161, 168 (1939). The rule of mandate prohibits a lower court,  
 22 upon receiving the mandate of a higher court, from "vary[ing] it or examin[ing] it for any other  
 23 purpose than execution." However, "the lower court may consider and decide any matters left  
 24 open by the mandate of the court." *United States v. Cote*, 51 F.3d 178, 181-82 (9th Cir. 1995)  
 25 (alterations and quotation marks omitted), quoting *In re Sanford Fork & Tool Co.*, 160 U.S. 247,  
 26 255-56 (1895). The vexatious litigant issue presented in Defendant's June 4, 2009 motion was the  
 27 only issue remaining open for reconsideration by this Court on remand. Hence, there are no  
 28 further matters within the purview of this Court to determine.

1 The circuit court has affirmed this Court's February 8, 2010 Judgment dismissing  
2 Plaintiffs' claims. *See* Doc. No. 190. The Judgment remains in full force and effect and this case  
3 remains closed.

4 **IT IS SO ORDERED.**

5 DATED: November 15, 2012

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7 Hon. Michael M. Anello  
8 United States District Judge  
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